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Introduction: Citizenship in the New States of South Eastern Europe

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Introduction: Citizenship in the New States of South Eastern Europe

This special issue of *Citizenship Studies** comes out of the first phase of research conducted under the aegis of the CITSEE project (The Europeanisation of Citizenship in the Successor States of the former Yugoslavia), during which the research team concentrated on in-depth country case analyses. This introduction briefly presents the CITSEE project, locating it within the broader frame of current trends in citizenship studies, and defines the notion of citizenship regime as it is used in the following analysis, before highlighting some critical and common elements that emerge in the papers, including the ongoing processes of Europeanisation evident in the region.

Key words: citizenship, citizenship regime, former Yugoslavia, South Eastern Europe, European Union, Western Balkans.

1. Introduction: why study citizenship in Yugoslavia and post-Yugoslav states?

The ambition of this volume is twofold: to show how important it is for citizenship studies to take into account the main changes in and varieties of citizenship regimes in the post-Yugoslav states and, on the other hand, to demonstrate to scholars of Yugoslavia and the wider Balkans that the Yugoslav crisis, disintegration and war as well as the current functioning of the new and old Balkan states, and the process of their integration into the European Union, cannot be fully comprehended without a deeper understanding of their citizenship regimes.

The post-Yugoslav landscape offers a unique situation when it comes to citizenship. It is simultaneously a post-socialist, post-partition and post-conflict region which has witnessed, over the last twenty years, multiple processes of disintegration, successful and unsuccessful attempts at secession, and a huge variety of internal political and territorial arrangements. It is also a region which is currently a geographical enclave encircled by Member States of the EU that these states aspire to join. Thus the EU integration process, with its successes and failures, is coupled with the EU's direct interventions stemming from crisis and post-crisis management. All these elements have directly influenced the new citizenship regimes. The experiments in this domain resulted in diversified regimes, the functioning, changes and results of which challenge normative and practical assumptions about citizenship. As such they are of interest to scholars of both citizenship theory and citizenship in other countries and regions.

After 1991, as Yugoslavia began to disintegrate, new states emerged, each with its own citizenship regime determining who was a 'citizen' and therefore had the privileges of citizenship (residence rights, welfare rights, property rights, political rights, etc.) as well as its obligations (military service, etc.). In place of a multinational federal state, with a system of multi-level federal and republican citizenship, emerged a series of smaller states. The complex system of titular nations, nationalities and minorities applicable in Tito's Yugoslavia was replaced with an equally complex system of multiple and overlapping citizenship regimes privileging often the dominant ethnic group. This was combined with a legal system of minority protection within each

state (easily betrayed politically and practically), built on a groundwork of international and EU norms in the field.

But even this ‘transition’ was not smooth. It occurred across an entire decade marked by a series of wars, conflicts, massacres and ethnic cleansing that involved not only post-Yugoslav states, entities and groups but also the international community either as passive observers, negotiators, active brokers or intervening military and political force. Many who resided in the newly independent states were not of the titular nation, or had republican citizenship of one other former Yugoslav republic from birth but had subsequently during the socialist period moved to reside in another republic without changing their republican citizenship. This group suffered immediate degradation in their civic status once Yugoslavia began to disappear. They became, either for a shorter or longer period of time, aliens in the place where they had long resided, or simply stateless. It was the problem of statelessness caused by the first disintegration in the former Yugoslav space, as well as widespread human rights abuses during the 1990s in particular, that drew international attention to the region. A number of international organisations including the Council of Europe, the International Law Commission¹ and the UNHCR led the way in combating such statelessness and human rights abuses, and in supporting work to document the “dark side” of new citizenship regimes in more detail (Pejić, 1995; UNHCR, 1997; Croatian Critical Law Review, 1998; and much later on, Imeri, 2006).

This early work engaging with the new citizenship regimes was primarily descriptive in character, and only Slovenia – where the attention of some scholars was caught by the case of the so-called ‘erased’ (see Deželan in this volume), whose fate sat

uneasily alongside Slovenia's rapid acceptance into the European mainstream as a member of the EU and of NATO – attracted substantial academic interest (Zorn 2005; Blitz 2006; Dedić et al. 2003; Medved 2007). In contrast, little work focused on states such as Serbia and Montenegro, where there were multiple processes of disintegration and fragmentation, first in 1991, then in 2006, with the Montenegrin independence, and finally, in 2008 with Kosovo's secession. There has also been concern about Bosnia and Herzegovina, FYR of Macedonia (hereafter Macedonia) and Kosovo² where there was direct impact of external forces on civic status of individuals and citizenship laws via the medium of international intervention, but hitherto this has received little scholarly attention. Even Croatia, where there has been a relatively stable citizenship regime in place for around two decades, has been little studied (see Omejec 1998, Ragazzi and Štiks 2009). Recently, a new endeavour to re-examine some of the key questions about political transformation in the former Yugoslavia through the lens of citizenship has emerged. In some of his early works on the topic Igor Štiks (2006, 2009) sought to examine the transformations of citizenship from the establishment of Yugoslavia in 1918 until the present day (Štiks 2010). More generally, the CITSEE project,³ to which this collection of papers belongs, has begun the process of putting citizenship at the centre of the analysis of the post-Yugoslav political constellation, using it – as with the seven case studies presented here – to raise some fundamental questions about the direction of travel of the still generally unconsolidated political and constitutional regimes of the new states of South Eastern Europe.

This special issue of *Citizenship Studies* represents the major output from the first phase of CITSEE's programme during which the research team concentrated on in-depth country case analysis. This introduction briefly presents the CITSEE project,

locating it within the broader frame of current trends in citizenship studies, before highlighting some critical and common elements that emerge in the papers, including the ongoing processes of Europeanisation evident in the region.

2. Methods and frames of analysis

CITSEE aims at a rich interpretative comparison of the citizenship regimes of the successor states⁴ of the former Yugoslavia, placed in the broader context of the evolving processes of European integration and its effects upon the new states in South Eastern Europe. The comparison is guided by a method loosely termed ‘constitutional ethnography’. This is a term coined by Kimberley Scheppele to describe work which involves the ‘study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal landscape’ (Scheppele, 2004: 391). The goal of such scholarship is not prediction, in the social scientific sense, but comprehension: ‘not explained variation, but *thematization*’ (Scheppele, 2004: 394; emphasis in the original). Such an approach to comparison needs to be built upon detailed and fully contextualised studies of the constitutional objects in view, studies which place at centre stage political struggles over the bargains which underpin newly created polities.

Alongside the broad method of constitutional ethnography, we make substantial use of the organising notion of ‘citizenship regime’ in order to limit the field of study. By ‘citizenship regime’ we generally mean the citizenship laws, regulations and administrative practices regarding the citizenship status of individuals but, in addition to

that, it also refers to existing mechanisms of political participation. More precisely, a citizenship regime is based on a given country's citizenship legislation defining the body of citizens (i.e. who is entitled to citizenship and all duties and rights attached to that status), on administrative policies in dealing with citizenship matters and the status of individuals, and, finally, on the official or non-official dynamic of political inclusion and exclusion. As we have argued elsewhere, 'in the citizenship context, therefore, the concept encompasses a range of different legal statuses, viewed in their wider political context, which are central to the exercise of civil rights, political membership and – in many cases – full socio-economic membership in a particular territory' (Shaw and Štiks 2010: 5).

This is a term adapted from gender studies where scholars use the term 'gender regimes' in order to refer to the range of institutionalised practices relating to how gender issues are regulated in a given society, acknowledging that these differ from state to state (Walby, 2004). Our notion of citizenship regime is inspired by Jane Jenson's definition of a 'citizenship regime' as 'the institutional arrangements, rules and understandings that guide and shape concurrent policy decisions and expenditures of states, problem definitions by states and citizens, and claims-making by citizens' (2007: 5). Casting the net widely, Jenson identifies four dimensions to a citizenship regime, namely the boundaries of state responsibilities ('the responsibility mix'), acquired rights and duties, governance or the 'governance arrangements of a polity...[including] the institutional mechanisms giving access to the state', and belonging or the definition of the boundaries of membership. Methodologically, Jenson – in common with Scheppele when dealing with constitutional ethnography – highlights the explanatory force of the

‘lived in’ dimension revealed by sociological or socio-legal exploration of rules and practices. These concerns animate in like manner the CITSEE research.

It is with a focus on the latter dimension of boundaries that the CITSEE project first set out, as the notes above make clear, to illuminate the new citizenship regimes in South Eastern Europe; however, as the papers in this collection show, it is not possible to close off questions about the link between the citizen and the state, such as rules and processes governing the acquisition and loss of membership statuses, including external citizenship and various internal ‘quasi-citizenship’ statuses, as well as the rights and duties which are central to the exercise of full membership of the polity, from the wider context of political contestation over the question of ‘who belongs?’ and ‘why?’. In other words, the boundaries to polity membership are not just external, but are also internal. Moreover, it is not just formal rules which define a citizenship regime, but also informal ideologies, narratives, beliefs and practices, which are often just as important.

A citizenship regime could also include certain statuses of internal ‘quasi-citizenship’ for non-national residents where these extend to electoral rights and related political rights which are normally restricted to national citizens alone, and of external ‘quasi-citizenship’ for non-nationals residing outside the territory of the state, who receive special benefits as former nationals (or their descendants) or ethnic kin groups related to the protector state. Ethnocentric citizenship policies, a common phenomenon in the wider Balkan and Central European region, generally involve invitations to ethnic kin in the neighbouring states and overseas to acquire citizenship of the kin state through a facilitated procedure. This includes not only all political rights in the kin state but often rights of political participation for non-resident citizens.

More generally, a citizenship regime could be said to encompass certain key individual and collective rights protected by national and international human rights law, such as minority rights and non-discrimination rights which profoundly impact upon the exercise of full civic membership within a society and a polity, in particular the right to non-discrimination on grounds of race or ethnic origin, gender and religious affiliation. This is the case even where the exercise of these rights is not strictly limited by reference to citizenship status or where the source of the norm being invoked for protection is not to be found in the national constitution or legislation, but in international law.

It is important to clarify that citizenship in the CITSEE project includes, but is not limited to, what is termed ‘nationality’ in international law, in the sense of the internally and externally recognised link between the citizen and the state.⁵ The rules which govern effective access to a given citizenship status, such as the requirements of civic registration, are often important issues in regions which have seen violent conflict, war and forced population movements, especially in the case of socially, politically and legally marginal groups such as the Roma, who are among the most vulnerable groups in the region to the long term exclusionary effects of forced population movements. However, other groups of internally displaced persons and refugees find it difficult to resolve their citizenship status even many years after conflicts. Where applicable, the concept of citizenship regime must also include the status and rights attaching to citizenship of the European Union, as well as the effects of EU law, such as rules on visa liberalisation or facilitated entry mechanisms (e.g. for students or those seeking

family reunification), giving due recognition, of course, to the important differences in character which exist between Union citizenship and national citizenship.

The main question, then, concerns the possibility for a citizenship regime to operate as a central element for a wider political settlement, reflecting, for example, contestations and conflicts between, for instance, titular ‘nations’ and minorities, among ‘constitutive peoples’, political and ideological groups or simply citizens over citizenship and related rights, especially rights of political participation. A related question concerns whether it makes a difference that these regimes all originally shared a common root in the socialist Yugoslavia, and that – conversely – in all cases are subject to influences and effects from the perspective of European Union law? We argue that the former two-tier Yugoslav citizenship regime as well as the two-tier EU citizenship regime, existing within the past socialist and the current liberal-democratic ideological setting, play a huge role in the making and shaping of post-Yugoslav citizenships. In other words, all existing post-Yugoslav citizenship regimes (with the exception of Kosovo) had been developing as legal entities since 1945 within the federal two-tier citizenship regime and they all aspired, after the break up of their previous federation, to join the EU. All these regimes are, to put it that way, in the *post-federal* and *pre-federal* constellation at the same time, or, in other words, between the past and future two-tier citizenship regime (see Džankić in this volume for the Montenegrin case), with Slovenia having the shortest route, some 13 years, from the South-Slavic citizenship regime to that of the European Union. Being in the “Europeanising” constellation clearly has an influence on the region and the way citizenship is conceived and functions there. Croatia will most probably become the 28th member of the EU in 2013, Montenegro and Macedonia are candidate countries and will

soon be joined by Serbia and, possibly, by internationally-supervised Bosnia. Only Kosovo's place in this jigsaw does not appear to have a reasonably clear perspective *vis-à-vis* the European Union, even though the role of the EULEX mission there is seen as crucial for Kosovo's state-building efforts.

Alongside the concept of citizenship regime as redefined and adapted here, a number of insights from recent conceptual and theoretical work in the field of citizenship studies have proved to be particularly helpful for the purposes of shedding further light upon these membership statuses. A favoured move is to offer a triptych as the basis for organising the material. For example, Christian Joppke (2007) draws distinctions between citizenship as status, citizenship as rights and citizenship as identity. Antje Wiener (1994) uses a triad of rights, access and belonging to express a similar endeavour to invest the notion of citizenship, understood as polity membership, with meaning. Rainer Bauböck's (2001) triadic division consists of membership, rights and practices. Finally, Richard Bellamy uses a slightly different triad of citizenship as rights, belonging and participation (2004: 9).

Other authors focus on the character of the polity or polities to which the member belongs. This underpins, for example, Rogers Brubaker's articulation of varying treatments of nation, nationhood and ethnicity in different parts of Europe (1992) as well as of complex relationships between kin states and their members in the near abroad in the triangle between national homelands, nationalising states and national minorities (1996). Brubaker is also one of the few analysts who understood the importance of citizenship policies in the new states that emerged after the break-up of socialist multinational federations (1992). By analysing the post-Soviet situation, he

noticed the three main models: the new state model (citizenship based on residence, most of the states), the restored state model (citizenship based on the link with the pre-WWII states such as Estonia and Latvia), and the mixed model (Lithuania). None of these models, as explained below, could be used to elucidate the post-Yugoslav states (nor other post-federal and post-partition states such as the Czech Republic and Slovakia that prior to independence also had a two-tier citizenship regime), except, very recently, Kosovo where the criterion of residence has been adopted to govern citizenship acquisition.

Understanding the citizenship regimes of the new states in South Eastern Europe also demands that attention be paid to work which conceptualises citizenship in the context of complex, overlapping polities. Here significant contributions have been made by Rainer Bauböck (e.g. 2001, 2007, 2010) whose work outlining the importance of including external citizenship in political theories of membership and rethinking citizenship regimes in plural rather than singular terms as ‘constellations’ provides an important toolkit for citizenship scholars. Plural and differentiated approaches to the idea of membership have led, for example, to attempts to see what conceptual links exist between horizontal ‘dual’ citizenship, arising as a result of migrant or kin minority transnationalism, and vertical ‘nested’ citizenship where citizenship ‘authority’ is split between different levels (whether within a state, as in Bosnia and Herzegovina, with its entity/state arrangements or in the former Yugoslavia with federal/republican citizenship, or in a non-state context such as the EU with the limited concept of EU citizenship).

The former Yugoslavia presents some scenarios which are, at first sight, rather *sui generis* in character, such as the entity/state arrangements in Bosnia and Herzegovina where large numbers of citizens have the citizenship of other neighbouring states, or of third countries, or Kosovo, where two citizenship regimes appear to be simultaneously applicable, given Serbia's ongoing sovereignty claim over the territory of Kosovo. However, as Bauböck (2007) has shown, it is possible to further develop and adapt useful conceptual vocabularies such as the notion of a condominium, where the citizens of a self-governing territory are simultaneously included within the jurisdiction of two separate authorities which could allow links and comparisons to be made with other new citizenship regimes elsewhere in the world emerging as a result of secession and ethnic conflict, as in Africa and parts of South East Asia.

The papers in this volume approach the various citizenship regimes in a rather open way from a variety of disciplinary and sub-disciplinary perspectives and draw upon insights from across political science and international relations, from anthropology and sociology, and from legal studies, producing papers in the spirit of constitutional ethnography. They take inspiration from the range of theoretical perspectives sketched above. Taken either individually or as a group, they do not aspire to offer the basis for a systematic top down comparison based on, for example, different modes of acquisition and loss of citizenship, or what are termed in the burgeoning field of comparative citizenship studies 'citizenship indicators'⁶ or 'citizenship configurations' (Bauböck and Vink 2011). The basis for such comparisons can, however, be found in extended papers prepared by many of the same team members and presented on the project website,⁷ as well as in work done in conjunction with the EUDO Citizenship Observatory which offers relevant national legislation and case law,

as well as country reports on modes of acquisition and loss.⁸ Thus the raw material for such systematic comparisons has been prepared, and many of these questions will be raised in the context of the second phase of CITSEE work. This will help to fit the new states of South Eastern Europe into their wider geographical and geopolitical context, recognising affinities in relation to questions of citizenship across the Balkan region, across the states which were directly affected by post-1989 transition, albeit not necessarily with the levels of violence and conflict faced in the former Yugoslavia, and indeed across Europe more generally, as EU membership spreads gradually to encompass the whole region.

3. Critical elements for understanding the post-Yugoslav citizenship regimes.

Having delineated the most productive theoretical approaches to studying these regimes, we will offer now a series of critical elements that cut across the cases under scrutiny. By doing so we will try to signal the most significant moments, conditions, policies, legal and political mechanisms for the creation and functioning of these citizenship regimes without attempting to exhaustively present their every aspect. This is done in more depth in the following chapters for each case study.

As noted above, the crucial historical moment of Yugoslavia's break-up – from the first steps completed by late 1991 through to Montenegro's independence and Kosovo's secession – initially gave birth to five new citizenship regimes that were supposed to replace the unified two-tier Yugoslav one. The initial determination of citizenry of the new states was thus essential for the definition and consolidation of the new regimes. In the region where all were equal citizens, the initial determination was

meant to answer the crucial questions of all political communities: who are the citizens of the new states with all rights and duties attached to that status? Who are aliens with restrictions related to that position? Who are legal residents with limited rights, defined restrictions and (un)clear prospects of becoming citizens?

Brubaker's post-Soviet models, or rather his new state model based solely on residency at the moment of independence (the so-called 'zero-option'), were not applied in any of the initial Yugoslav successor states. This is because the Yugoslav republics, unlike those in the Soviet Union, had had their own republican citizenship regimes, separate laws on citizenship and separate civic registers since the Second World War. Therefore, they all applied, a so-called legal continuity model. It meant that all previous citizens of the former socialist republics would be automatically rendered citizens of the new states. However, this was not the only principle dominating the initial determination. Ethnic preferences or other restrictive elements for acquisition of new citizenship were introduced in many of the new states. In the context of open conflict and war, this profoundly changed the legal status, and attached political, social and economic rights, of many individuals.

In other words, where there was a group of equal citizens a moment before, new groups of individuals with differentiated status were immediately formed, ranging from those included into the new citizenship, those excluded from it, to those who would be invited to join the newly formed citizenry (Štiks 2010). Those invited were generally invited on an ethnic card (such as ethnic Croats to Croatian citizenship). Those excluded were often excluded for having a different republican citizenship and/or different ethnicity. When conflict erupted another group was formed on the same ethnic card,

those who – on the basis of perceived or real political exclusion – self-excluded from new citizenships politically (such as the majority of Kosovo Albanians after the abolition of Kosovo autonomy by Serbia in 1989 and their subsequent political and social exclusion) or attempted to create their own and/or to join some other ethnically closer citizenship (such as many Croatian and Bosnian Serbs or many Bosnian Croats).

It could be safely concluded that the process of fragmenting the previous Yugoslav citizenship regime, mostly along the republican lines, resulted in a widespread exclusion and deprivation of both citizens' and human rights, and a very large number of *de facto* or *de jure* stateless individuals. The process affected to the greatest degree the most vulnerable groups, such as members of a minority, especially those coming from a different republic (the example of the “erased” in Slovenia), internally displaced people or refugees, and one group in particular, the Roma. It is the Roma who continue, in practice, most often to be stateless in the new states of South Eastern Europe, with consequences in terms of their capacity to benefit from mobility rights and, in future, EU citizenship.

Ethnic engineering became pervasive even where it was not codified legally or was practiced against the existing laws. Štiks defines ethnic engineering in the context of creation of new independent citizenship regimes as the intentional policy of governments and lawmakers to influence by legal means and related administrative practices the ethnic composition of their population in favour of their ethnic core group (see 2006: 484; 2010: 11). Ethnic engineering, practiced in almost all Yugoslavia's successor states, was meant as a tool of both exclusion and inclusion. Its purpose was to exclude as much as possible, legally, politically and practically, members of other

ethnic groups from new citizenship and at the same time to include co-ethnics at home, overseas, but for the most part those living in the neighbouring countries.

By opening the doors of its citizenship to co-ethnics abroad, dual citizenship became one of the main characteristics of these regimes, whether they receive new citizens (such as Croatia since 1991, and Serbia increasingly since 2004) or share their citizens (and possibly lose them) with a neighbouring state (Bosnia-Herzegovina with both Croatia and Serbia, Montenegro with Serbia or, to a certain extent, Serbia with Hungary and Macedonia with Bulgaria). Kosovo is a case of competing and overlapping citizenship regimes between the Serbian one that still claims Kosovans as its own citizens and the newly created Kosovan one that claims all residents of Kosovo. As Jelena Džankić has noted,⁹ Croatia and Serbia (but one can add Kosovo as well) have a rather liberal approach to acquisition of their citizenship, whereas states with fragile ethnic balances have very restrictive policies and impose long residency rules for the acquisition of their citizenship (Bosnia, Montenegro, Macedonia). The reason for “openness” might be found in the perception that accepting new citizens cannot cause any major change in ethnic balances (actually their liberal policies are intended to consolidate the dominant group). The Slovene case is interesting in this context. Ethnically homogenous Slovenia facilitates the acquisition of its citizenship for ethnic Slovenes abroad but does everything to prevent economically necessary migrant workers (coming from other former Yugoslav republics, mostly Bosnia) from becoming Slovenian citizens by limiting their work permits and imposing stringent language tests.

The final result of ethnic engineering policies is expected to be a significant change in the ethnic composition of citizenries of the new states in favour of the core

ethnic group “owning” that state. In this respect, it was an additional but nonetheless powerful tool completing the results of expulsions and ethnic cleansing during the 1990s and continues to be used today. This already radically changed demographic picture that transformed multi-ethnic Yugoslavia into a series of more or less ethnically homogenous states and territories is further confirmed with ethnocentric migrations that continue after the conflict. The politics of numbers thus turned out to be crucial for the consolidation of new post-socialist political regimes based on formal acceptance of electoral democracy. Since some of the basic rights of every citizen involve political rights, it is easy to conclude that in the context of electoral competition, governed by the majority-minority dynamics, exclusion from citizenship or inclusion of certain categories was part and parcel of electoral arithmetic (for example, see Džankić for Montenegro and Koska for Croatia, but also Deželan for Slovenia in this volume). In the context of ethnicised politics or *ethnopolitics*, this meant excluding members of other groups as political competitors. Often it meant outright political exclusion or barring access to citizenship. In its worst manifestations, it meant forcing people to leave their places of residence, expelling them or ethnically cleansing a territory where political competition and elections take place.

Today, we can observe more inclusiveness such as in Croatia and Macedonia after 2000 (see Koska and Spaskovska in this volume), but also remnants of statelessness (the still unsolved “erased” case in Slovenia, on which see Deželan in this volume; the Roma’s problems with registration and documents throughout the successor states), and new citizenship struggles (between Serbia and Montenegro and Serbia and Kosovo, see Džankić and Krasniqi in this volume). In this respect, citizenship can sometimes play a reconciliatory role, as in Croatia and Macedonia, but it can also be a

divisive issue as in Montenegro and Kosovo. In other words, citizenship arrangements can reproduce conflicts instead of solving them.

Here we can only attempt at a generalised categorisation of the post-Yugoslav citizenship regimes by dividing them according to the most salient feature of their constitution and functioning into ethnocentric, multi-ethnic and civic. We will show what these regimes are today without forgetting what they were before, namely that many of these regimes went through considerable changes in their character over the past two decades. An overview of citizenship laws and administrative and political practices of Slovenia, Croatia and Serbia would qualify them today as ethnocentric. The ownership of the state by the constituent ethnic nation, the facilitated naturalisation for co-ethnics abroad, the wording of the constitutions, their state symbols, political narratives and agendas all point in this direction. Interestingly, although Serbia had a civic constitution during the Milošević era and its citizenship was reserved only for the former republican citizens of Serbia and permanent residents, its policies towards Kosovo Albanians, its involvement in the wars in Croatia and Serbia, its manipulation with Serb refugees confirm that the practice is often much more important than the text of the laws (for complex citizenship policies and competing narratives in Serbia in the 1990s see Vasiljević in this volume). Since 2004 and especially since the new Constitution was adopted in 2006, Serbia has also legally confirmed its ethnocentric character.

Macedonia between 1991 and 2001 would fit into the previous group but not Macedonia after the EU-brokered Ohrid Framework Agreement that ended the conflict between Albanian rebels and the Macedonian government. It constituted Macedonia as

multi-ethnic, or, more precisely, as a bi-ethnic state based on consociational agreements between the Macedonian majority and the 25 per cent-strong Albanian minority. Bosnia after Dayton, and Kosovo after 2008, (both states under heavy international supervision) have been gifted multi-ethnic citizenship regimes, largely as a result of external intervention. In practice it means that although all citizens are considered equal, the political practice is ethnicised involving consociational arrangements, ethnic voting and quotas, ethnic representation and vetos (see Sarajlić and Krasniqi in this volume). It is important to note that during the war Bosnia adopted a purely civic citizenship regime covering all previous republican citizens and setting liberal rules for acquisition of its citizenship by permanent residents.

Today the only civic post-Yugoslav state is Montenegro, but it is also the only one that strictly prohibits dual citizenship. This is primarily due to the fact that Montenegro does not have an ethnic majority (the percentage of ethnic Montenegrins according to the 2011 census is 44.98%)¹⁰ and the balance between ethnic Serbs and Montenegrins is fragile and has changed over time (see Džankić in this volume). Serb politicians complain that the civic definition of the state in spite of its multi-ethnic composition deprives them of their cultural rights and equal political representation, whereas the ban on dual citizenship hinders their relationship with their kin-state. So, even a purely civic citizenship in certain contexts does not satisfy everyone and could be seen as beneficial to one dominant group and discriminatory *vis-à-vis* the rest.

The final critical and cross-cutting element to be reviewed concerns the impact of external and especially ‘Europeanising’ factors upon the citizenship regimes under review. It remains a sad irony that in 1989 it was Yugoslavia which already had the

closest relations with the European Communities, as they then were, in the form of trade agreements and arrangements regarding migrant workers, and thus it was Yugoslavia which might have been expected to benefit most from the new possibilities opened up in the post cold war world. In practice, of course, because of the war that followed, it was only Slovenia which was included in the first phase of post-1989 EU enlargement in 2004. Nonetheless, all of the states in the Western Balkans, including Albania, have been offered a 'European perspective' by the EU and the Member States, which should include some sort of road map to membership, although this is less clear in the case of Kosovo, which has not been recognised by all EU Member States.

It is tempting, now that there is a relatively high degree of stability in the region, to focus solely on EU conditionality when thinking about exogenous factors, because the EU is undoubtedly the dominant actor, with the Western Balkans on its doorstep as a geographical enclave. In practice, it is important to distinguish between a variety of different sources and types of external norms and actions which impact upon the various citizenship regimes, because only then is it possible to undertake an effective census of their character and effects (see Štiks 2011). At a certain point on the pathway to membership, especially as regards the issue of visa liberalisation, there can be significant effects of EU pressure, as the cases of Serbia – which has distinguished between different groups of citizens, excluding the Kosovo residents, at the behest of the EU – and Montenegro – which has instituted new legislative regimes governing resident aliens which have had significant effects of groups such as the Roma in order to make its legislative framework 'fit' for visa liberalisation. All these countries willingly changed different parts of their legislation in order to qualify their citizens for the Schengen space visa-free travels. However, as the cases of Croatia and Slovenia show,

actual direct effects on these regimes, once there are no other tools available such as visa liberalisation, are rather scant, not least because there is no EU *acquis* to be adopted in relation to national citizenship.

However, a wider range of external actions in the region should be taken into account. As Sarajlić and Krasniqi show in relation to Bosnia and Kosovo, external actors have been decisive in imposing citizenship laws and, especially in the latter case given Kosovo's semi-protectorate status today, in supplying the apparatus necessary to make the regime function effectively. There has thus been direct intervention and ongoing direct supervision by international organisations, which is unusual when compared to most new states. International pressure has also taken more subtle forms, as in the case of the role of the EU and other parts of the international community in relation to the Ohrid Framework agreement in Macedonia, which brought that state back from the brink of serious internal ethnic conflict in 2001.

We also have to underline the effects of other 'Europeanising' mechanisms (see Shaw 2011). Bosnia's accession to the European Convention on Human Rights and Fundamental Freedoms (ECHR) is having an impact on questions of political citizenship, via the medium of the non-discrimination principle in the cases of *Sejdić and Finci* that will affect the electoral law and, possibly, the rigid ethnification of Bosnian political space (see Sarajlić in this volume). The case of the Erased has been before the Court of Human Rights for some time, and here it is Slovenia's handling of the subsequent consequences of erasure, not the erasure itself, which has brought it into the dock. Slovenia is expected soon to close this chapter after two decades of controversy. The ECHR is an example of an international regime with which states

comply voluntarily, as a key condition of moving into the European mainstream. The European Convention on Nationality of the Council of Europe, on the other hand, has been adhered to by fewer states (Macedonia and latterly Montenegro with Slovenia and Croatia resisting its adoption), but its norms have resonated in a number of national laws (such as the Serbian one), on issues such as the avoidance of statelessness. In other words, external factors should not be viewed only as imposed and forced, but result from complex forces and different legal and political mechanisms which are at play in the context of ongoing transformations of the new Balkan states.

4. Conclusion

Given the explanatory weakness of drawing distinctions between citizenship regimes only according to a typology of ethnocentric, multi-ethnic and civic, we suggest instead organising the states into overlapping groups based on central political features of the various regimes, and using this as the basis for setting the order of the papers in this volume. This begins with the states that have been through multiple disintegrations between 1991 and 2001, such as Serbia, Montenegro and Kosovo. Serbia and Montenegro also show us sharply contrasted citizenship policies even before the actual disintegration took place. While Serbian citizenship is becoming more ethnocentric and thus open to new citizens, the Montenegrin citizenship is defined as civic and intolerant towards dual citizenship of its own citizens and potential new citizens. Kosovo, as the youngest and least consolidated state because of its contested unilateral secession from Serbia, is not only a product of these disintegrations and fragmentations but also a result of international intervention, supervision and design. Kosovo thus introduces us to another group of the post-Yugoslav states, those whose citizenship regimes have been constructed as consociational and multiethnic with outside help or influence, leading us

therefore to Bosnia since Dayton, and Macedonia since Ohrid. It also signals a difference between internally created and internationally designed or influenced regimes.

However, Macedonia is not a semi-protectorate like Kosovo or Bosnia. The conflict between majority and minority groups brings it closer to the Croatian case. What sharply differs is the outcome. Although the two states had similar citizenship policies at the beginning of the 1990s, clearly favouring the ethnic majority, Croatia saw a war between its government and Serb rebels, while Macedonia preserved its fragile peace. The war in Croatia ended with the crushing of the Serb rebellion and exodus of more than half of its pre-war Serb population. At the moment when Croatia finally started to re-integrate ethnic Serbs into its citizenship, Macedonia saw a conflict that would change the character of the state. Croatia solidified its ethnic majority while Macedonia adopted consociation. Macedonia went through profound constitutional changes and amended its citizenship law in very significant ways, while the Croatian citizenship law remains the most stable one of all, remaining virtually unchanged since 1991. Interestingly, both countries gained the EU candidate status almost at the same time. Croatian citizenship, despite all its attendant difficulties, will soon become part of European citizenship regime, whereas Macedonia, blocked in the name dispute with neighbouring Greece, made little progress towards another supranational union.

Croatia's prospective accession has confirmed what we know from the Slovenian case, or, for that matter, from the cases of the Baltic states, especially Estonia and Latvia. The EU does exercise limited leverage on states to make citizenship policies more inclusive during the accession phase but it does not tackle their ethnocentric

character or offer solutions to some major problems which have resulted from ethnocentrism. Nevertheless, Slovenia shows that entering a new two-tier citizenship regime does bring significant changes. EU citizenship automatically introduces new rights but also the obligation to respect the political and social rights of other EU citizens on your territory. So far it is too early to predict how the dynamic of the EU integration of this region might affect these increasingly overlapping citizenship regimes in the longer term.

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¹ Links to the various reports prepared by Vaclav Mikulka on behalf of the International Law Commission as well as the subsequent UN General Assembly Resolutions can be found at: http://untreaty.un.org/ilc/guide/3_4.htm.

² The inclusion of Kosovo in this collection of papers is without prejudice to the broader ‘status’ question of the recognition or non-recognition of Kosovo’s independence. In practice, Kosovo has been having an independent citizenship regime since 2008, and it has been studied as such in the context of this volume as well as within the CITSEE project.

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- ³ The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia, ERC 230239; <http://www.law.ed.ac.uk/citsee/> and <http://www.citsee.eu>. CITSEE is funded for five years from 2009 and 2014, with the second phase of work starting in autumn 2011.
- ⁴ We use “successor states”, interchangeably with “new states”, for all 7 states with independent citizenship regimes created after the break-up of Yugoslavia, although *stricto sensu* there were 5 successor states of the former Yugoslavia (Slovenia, Croatia, Bosnia-Herzegovina, the Federal Republic of Yugoslavia, and Macedonia).
- ⁵ This is, of course, a technical use of the term ‘nationality’, which is quite different to the way that ‘nationality’ is often used in South-Slavic languages (e.g. *nacionalnost* or *narodnost*) to denote an ethnic conception of ‘national’ identity. To avoid terminological confusion we mostly use the term ‘citizenship’.
- ⁶ <http://eudo-citizenship.eu/citizenship-forum/380-which-indicators-are-most-useful-for-comparing-citizenship-policies>.
- ⁷ See the CITSEE website (<http://www.law.ed.ac.uk/citsee/workingpapers/>) for further papers on the seven citizenship regimes covered in this Special Issue which focus more closely upon the fine detail of the respective constitutional and legislative frameworks. In order to complete the picture from the perspective of the EU concept of the ‘Western Balkans’, Albania is also covered in this work.
- ⁸ See <http://eudo-citizenship.eu/country-profiles>.
- ⁹ ‘The making of citizenship in multicultural unconsolidated states’, presented as a part of the CITSEE panel at the conference “Accepting Diversities: Human

Rights and the Challenges of Reconciliation” organised by University of Bologna and IECOB, the University of Sarajevo and its CIPS, in Sarajevo on 29th and 30th April 2011; personal communication.

- ¹⁰ Results of the 2011 census in Montenegro can be found at:
[http://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje\(1\).pdf](http://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje(1).pdf).